

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 11/19/03 Item: ##.

File Number
PDA03-013-01

Application Type
Appeal of the Director's Decision to Approve a
Planned Development Permit Amendment

Council District
6

Planning Area
Central

Assessor's Parcel Number(s)
261-03-051

PROJECT DESCRIPTION

Completed by: Erin Morris

Location: northwest corner of Stockton Avenue and Cinnabar Street

Gross Acreage: 4.09

Net Acreage: 4.09

Net Density: 60 DU/AC

Existing Zoning: A(PD) Planned Development

Existing Use: Vacant

Proposed Zoning: No Change

Proposed Use: 245 multi-family affordable housing units

GENERAL PLAN

Completed by: ELM

Land Use/Transportation Diagram Designation
Residential Support for the Core (25+ DU/AC)

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ELM

North: Commercial and Industrial

LI Light Industrial, HI Heavy Industrial

East: Light Industrial

HI Heavy Industrial

South: Commercial, Industrial, and Residential

LI Light Industrial

West: Residential

LI Light Industrial, A (PD)

ENVIRONMENTAL STATUS

Completed by: ELM

☒ Environmental Impact Report certified on 7/10/02
☐ Negative Declaration circulated
☐ Negative Declaration adopted on May 22, 2002

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: ELM

Annexation Title: College Park/ Burbank Sunol

Date: December 8, 1925

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial

Date: _____

Approved by: _____
☐ Action
☐ Recommendation

APPLICANT/OWNER

Cinnabar Commons Association
Attn: Tom Rocca
3115 Vicente Street
San Francisco, CA 94116

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: ELM

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memoranda from the Fire Department and Police Department.

GENERAL CORRESPONDENCE

See attached correspondence from appellant.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is the appeal of the Planning Director's decision to approve a Planned Development Permit Amendment (File No. PDA03-013-01) to allow architectural and site modifications to a previously approved Planned Development Permit for 245 multi-family residential units. The Planned Development Permit Amendment was heard at the October 8, 2003 Director's Hearing and approved by the Planning Director on October 17, 2003.

A Planned Development Zoning (File No. PDC01-038) for the subject property was approved by the City Council on September 19, 2002. The Zoning allowed for the development of 245 multiple-family attached affordable residential units. A Planned Development Permit (File No. PD03-013) for the subject property was approved by the Planning Director on June 11, 2003.

The current Planned Development Permit Amendment proposes modifications to the project which include: relocation of the proposed tot lot, architectural changes that increase visibility of the parking garage, the use of artificial grass in common open space areas, elimination of a private street, and provision of surface parking.

The site is surrounded by (1) commercial and industrial uses to the north, 2) commercial, industrial and residential uses to the south; (3) single-family detached residential, multi-family attached residential and surface parking to the west; and (4) the Pacific Gas & Electric Service Center to the east.

On October 17, 2003, Joanne Buckley, who owns property within 1000 feet of the project site, filed an appeal of the Director's decision to approve the subject Planned Development Permit (see attached letter). A response to Ms. Buckley's appeal is provided in the Analysis section below.

ENVIRONMENTAL REVIEW

The impacts of this project were addressed in a Final Environmental Impact Report entitled *Cinnabar Commons*, certified by the Planning Commission on July 10, 2002.

COMMUNITY OUTREACH

Public hearing notices for the proposed Permit Amendment and the subsequent appeal were mailed to all property owners and tenants within 500 feet of the subject site. The subject Permit Amendment was considered at a public Director's Hearing conducted on October 17, 2003. During the zoning and initial Planned Development Permit stages, numerous community meetings were held. Staff has been available to discuss the project with interested members of the public.

GENERAL PLAN CONFORMANCE

The proposed multi-family residential use is consistent with the *San Jose 2020 General Plan Land Use/Transportation Diagram* designation of Residential Support for the Core (25+ DU/AC). This designation has been applied within the Downtown Core and Frame Areas to expand the potential for residential development close to central area jobs and retail uses. The proposed residential project provides a density of 60 units per acre in conformance with the Residential Support for the Core designation.

ANALYSIS

The issues raised in the appeal are presented below, followed by a staff response.

Comment 1. *The community surrounding the Cinnabar Commons project was never informed about this amendment by Mr. Stone prior to submittal to the Planning Department. Our community was under the assumption that the project would move forward with the plans that were originally submitted and approved by the Planning Commission and City Council back in February. Mr. Stone has been developing this project for the last two and a half years and he was well aware of the costs involved at the time his original application was approved. We are dismayed at the way Mr. Stone has chosen to amend his plans for this project at the eleventh hour without community input.*

Staff Response. Notice of this Permit Amendment was provided to owners and tenants of all properties located within 500 feet of the subject site in conformance with the City Council's Public Outreach Policy.

Comment 2. *Architectural changes that increase the visibility of the garage significantly above ground do not conform to the historical flavor of the surrounding neighborhood with houses dating back to the 1920s. The surrounding homes do not have elevated garages with reflective light shining out over the surrounding community. In the original design, this garage was below ground. The cost to excavate the garage below ground level does not constitute a major expense to this project. We would like Mr. Stone to honor his original design and are asking the Planning Commission to reject this change.*

Staff Response. The approved development standards for the subject site allow a podium height of up to 5 feet above grade. The original Planned Development Permit approved for the site proposed a garage that was in conformance with this requirement. The height of the garage as proposed in the current Planned Development Amendment continues to conform to this requirement. The proposed change in the garage involves an increase in the size of the garage openings intended to reduce the amount of mechanical ventilation required pursuant to the Uniform Building Code and some additional excavation of earth adjacent to the garage to accommodate the new openings. The increased number

and size of the proposed openings results in a garage that is potentially more visible, especially at night when it is lighted. In order to address this issue, staff has included a revised plan condition in the permit requiring revised landscape plans to provide additional screening of the garage openings by means of landscaping and a low wall. The applicant has agreed to work with staff to complete revised landscape plans to further screen the garage openings.

Comment 3. *The use of artificial grass. Again, Mr. Stone has made changes to the original plan that does not conform to the surrounding historical neighborhood. Neighbors take great pride in their manicured lawns and landscaped gardens. Nowhere in the neighborhood do we see artificial grass. There will be over 400 children living in this complex. They deserve a healthy environment to play in with real grass that oxygenates the air and smells good. Not only is this change an insult to our community but it denigrates and shows no respect for the families who will reside in this complex. The cost to plant real grass does not constitute a major expense for this project. We are asking the Planning Commission to reject this change.*

Staff analysis/response: Landscaping is a crucial feature on a podium. In the absence of adequate landscaping and shade structures podium courtyards can be hot and barren environments that are not highly useable. Staff has worked with the applicant to ensure the provision of trees, shade structures and other landscaping within the podium courtyard areas to help reduce the heat and create a pleasant environment for recreation. After assessing project costs, the applicant proposed artificial grass as a cost-cutting landscape alternative for approximately 6,000 square feet of the podium. The artificial grass will be used in the same manner as real grass but will not require watering and will be made of recycled materials. The perimeter of the project, including all areas adjacent to public sidewalks, are proposed to be landscaped with live plant materials including groundcover, shrubs, and trees. While artificial grass is not the preferred landscape material, staff is cognizant of budget constraints associated with affordable housing and supports the applicant's proposal to use artificial grass in this case.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director's decision to approve the proposed Planned Development Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

FINDINGS

1. The Planned Development Permit Amendment, as issued, furthers the policies of the General Plan in that:
 - a. This project is consistent with the General Plan Land Use/Transportation Diagram designation of Residential Support for the Core.
 - b. This Amendment allows plan changes only and does not affect the adherence of the Permit to General Plan Policies.
 - c. This proposal will encourage the development of the previously approved Planned Development

Permit.

2. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development zoning of the property in that:
 - a. This Planned Development Permit will allow architectural and site modifications for Cinnabar Commons including: 1) relocation of tot lot; 2) architectural changes that increase visibility of the garage; 3) use of artificial grass; 4) elimination of private street, and; 5) provision of surface parking areas.
 - b. This Amendment is for an allowed use and does not affect zoning conformance or conditions in any way.
3. The interrelationship between the orientation, location and mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that:
 - a. The Planned Development Permit approved for this site is consistent with adjacent or nearby developments with regard to design, orientation and building scale.
4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. The environmental impacts of this project were addressed by a Final EIR entitled, "Cinnabar Commons," and certified on July 10, 2002 by the City of San José City Council.
 - b. The project conforms to the approved Planned Development zoning and Planned Development Permit for this land and will not have a significant adverse impact on the environment.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Permit Expiration.** This Planned Development Permit Amendment shall automatically expire two years from and after the date of issuance hereof by said Director, if within such two-year period, the proposed use of this site or construction of buildings is not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit Amendment. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Conformance with Plans.** Construction and development shall conform to approved Planned Development Amendment plans entitled, "Cinnabar Commons," dated September 24, 2003, as revised by Condition #6, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Revocation.** This Planned Development Permit Amendment is subject to revocation for violation of any of its provisions or conditions.

4. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
 5. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning and Building within **60 days** from the date of issuance of permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.*
 6. **Revised Plans.** Within 60 days of the issuance of this permit and prior to recordation, the applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
 - a. **Plan Set Consistency.** Revise the plan set so that the plan sheets are internally consistent.
 - b. **Landscape Plan.** Revised the site and landscape plans to provide additional screening of the perimeter garage openings by means of landscaping and a low wall in a manner that conforms to the Building Code. Provide a detail of the wall.
 - c. **Site Plan/Fence.** Revise the height of the proposed wooden fence that surrounds the residential property located on Stockton Avenue to a height of 7 feet. Provide a detail of the revised fence.
 - d. **Site Plan/Street Trees.** Show the location and proposed disposition of all existing street trees.
 - e. **Site Plan/Artificial Grass.** Revise the site plan to reference the artificial grass detail at all locations where such grass is proposed.
 7. **Approved PD Permit.** This Planned Development Permit Amendment can only be implemented in conjunction with the full and complete implementation of the previously approved Planned Development Permit, File No. PD03-013.
 8. **Previous Conditions.** All of the conditions of the previously approved Planned Development Permit shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Amendment.
 9. **Modification of Prior Condition.** Condition No. 4, *Conformance with Plans*, of Planned Development Permit File No. PD03-013 is replaced by Condition No.2, *Conformance with Plans*, of this Amendment.
 10. **Artificial Grass.** The artificial grass shall be maintained in good condition and the filler material shall be contained within the turf area.
 11. **Emergency Access.** The emergency access and methods to limit public access shall conform to the requirements of the Fire Department.
- c: Joanne Buckley, 858 Harding Avenue, San Jose, CA 95216
Andy Faber, Berliner Cohen, 10 Almaden Boulevard, Eleventh Floor, San Jose, CA 95113
Larry Stone, 1373 Bedford Avenue, Sunnyvale, CA 94087

